



## WISCONSIN CATHOLIC CONFERENCE

June 15, 2012

### **Submitted Electronically**

Centers for Medicare & Medicaid Services  
Department of Health and Human Services  
Room 445-G  
Hubert H. Humphrey Building  
200 Independence Ave., SW  
Washington, D.C. 20201

Dear Sir or Madam,

As leaders of the Roman Catholic Church in Wisconsin, we respectfully submit the following comments on the Advance Notice of Proposed Rulemaking (ANPRM) on preventive services (77 Fed. Reg. 16501, March 21, 2012).

We write to address three issues: 1) the unacceptably narrow definition of “religious employer” and the failure to consider alternative approaches currently observed under both state and federal law; 2) the manner in which the proposals in the ANPRM only further exacerbate infringement of religious liberty; and 3) the unique, negative impact of the Final Rule in Wisconsin, which would eliminate the only exception, self-insurance, permitted under the current state mandate.

### **The Definition of “Religious Employer”**

In our comments submitted September 2, 2011, to the Final Rule, we noted that the four-pronged exemption for religious employers has such a narrow application that its “effect is to so constrain religious activity as to diminish the religious liberty of Catholics in Wisconsin and the United States.” But rather than rescind the mandate or expand the definition of religious employer, the current administration has repeatedly affirmed this definition, most recently in the ANPRM.

The ANPRM goes on to state, “Whether an employer is designated as ‘religious’ for these purposes is not intended as a judgment about the mission, sincerity, or commitment of the employer...” Considering the dramatic effect the Final Rule will have on Catholics and their affiliated organizations in Wisconsin, this process is not only a “judgment,” but a penalty.

As noted in our previous comments, integral to the mission of the Catholic Church is “a shared responsibility for the well-being of all.” The Catholic faith in Wisconsin, a presence that predates our State’s admission to the Union, is not limited to the confines of church buildings. It is at Camp Tekawitha in the Diocese of Green Bay, which offers outdoor recreational opportunities to children in needy families. It is present in Catholic Charities’ financial counseling programs in La Crosse, which serve those struggling to make ends meet. It operates among multiple Catholic entities, such as the Diocese of Madison’s Rural Life office, Catholic Charities, and St. Vincent de Paul Councils, which in 2008 joined together to provide mobile disaster assessment and aid to flood-ravaged areas in Wisconsin.

These are but a handful of the diverse Catholic ministries through which Catholics serve God by being of service to His people. They are as central to our identity and mission as those ministries referenced in the exemption for “religious employers” in the Final Rule.

Therefore when, as the ANPRM states, the administration expresses a desire to develop a system “with recognition of different religious organizations' perspectives on what constitutes objectionable cooperation with the provision of contraceptive coverage,” it is difficult to respond. The failure thus far to recognize what truly constitutes a religious employer demonstrates that such recognition is cursory at best.

We employ and aid Catholics and non-Catholics alike because our faith compels us to be of service to all. Catholic Charities Bureau of Superior’s Challenge Center provides those with physical and developmental disabilities an opportunity to contribute to their community. At St. Rafael the Archangel School in Milwaukee more than 400 students, many who are not Catholic and almost all of limited means, receive a quality education in a safe environment, injecting vital “social capital” into a neighborhood with few economic resources. We uphold the dignity of every human person by affirming the right to life, education, shelter, just employment, and most relevant to the matter at hand, health care.

However, the duty of faith, which compels us to care for all and ensure that all have care, cannot be met under the ANPRM without endangering it in one form or another. Many Catholic institutions will be forced either to violate the tenets of our faith – either by limiting ministry of service or forgoing health care for their employees – or suffer reprisal.

The ANPRM seeks clarification on how to distinguish between a religious employer, eligible for an exemption, and a religious organization – also an employer – not eligible for an exemption, but eligible for an accommodation. Our answer: this is a distinction without a difference. Excluding a Catholic organization from access to the exemption denies the essence of their purpose and violates our rights as a Church under the Constitution.

### **Further Intrusion on Religious Authority and Liberty**

The ANPRM repeatedly notes the two stated goals of the administration: “to maintain the provision of contraceptive coverage without cost sharing to individuals who receive coverage thorough non-exempt, non-profit religious organizations with religious objections to contraceptive coverage in the simplest way possible;” and “to protect such religious organizations from having to contract, arrange, or pay for contraceptive coverage.” However, the solutions offered in the ANPRM are anything but simple and rational, especially for self-insured plans.

As proposed, religious organizations would have to provide notice and beneficiary information to plan administrators. Self-insured entities would have to enter into new agreements with third party administrators (TPAs), allowing TPAs to “have authority and control over the funds available to pay the benefit, authority to act as a claims administrator and plan administrator, and access to information necessary to communicate with the plan's participants and beneficiaries.” Other options include similar requirements. This is in addition to the self-certification process required to access the accommodation.

These solutions are not simple, nor do they address when an entity uses a Catholic issuer for their policies, or a religious entity as a third party administrator. In these instances, the very entity that

must assume responsibility for providing no-cost contraceptive coverage may also be one that has objections to the provision of that coverage.

The "simplest way," aside from eliminating the mandate, would be to expand the exemption to all who object as a matter of moral conviction.

### **The Effect on Self-insured Religious Plans in Wisconsin**

The ANPRM states that, "This religious exemption is consistent with the policies in some States that currently both require contraceptive coverage and provide for some type of religious exemption from their contraceptive coverage requirement." In fact, as later acknowledged, this is not the case. Self-insured plans, which are currently not subject to State insurance laws, would have to comply with the Final Rule. This goes well beyond any state law.

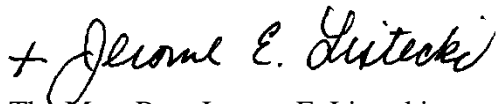
In addition, while more than two dozen states mandate some coverage of these services, most allow an exemption for religious entities that is more extensive than the one provided in the Final Rule. In Wisconsin, we had hoped that the federal government would follow these models of respect for people of faith as our own state does not offer such an exemption.

In states like ours, where a more stringent mandate applies, except for the narrow federal exemption outlined above, all plans must adhere to the federal mandate at a minimum and adhere to any applicable state requirements. For Wisconsin employers, including those that chose to avoid the state mandate through self-insurance, such as four of the five Catholic dioceses, the result is that all plans are now subject to a requirement more restrictive than ever previously experienced in the nation. While certain religious employers may seek the federal exemption, if applicable, non-exempt entities or Catholic employers in the private sector that opted to self-insure would no longer have any recourse.

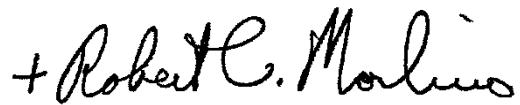
In conclusion, we join with the United States Conference of Catholic Bishops in asking that the mandate be rescinded or adapted to respect the religious identity of all our ministries and the religious convictions of the Catholic faithful.

Thank you for your consideration of our views on this important matter.

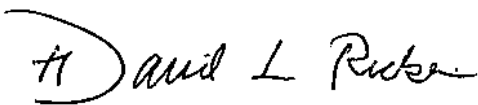
Sincerely,



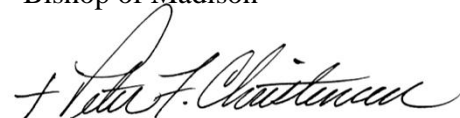
The Most Rev. Jerome E. Listecki  
Archbishop of Milwaukee




The Most Rev. Robert C. Morlino  
Bishop of Madison



The Most Rev. David L. Ricken  
Bishop of Green Bay



The Most Rev. Peter F. Christensen  
Bishop of Superior



The Most Rev. William P. Callahan  
Bishop of La Crosse

Cc: The Honorable Kathleen Sebelius, HHS Secretary